

Office of School Board Attorney  
Walter J. Harvey, School Board Attorney

**SUBJECT:** INITIAL READING: **TO AMEND POLICIES 6114, *COST PRINCIPLES FOR FEDERAL FUNDS*, AND 6320, *PURCHASING*, AND TO ADOPT POLICY 6320.07, *PROCUREMENT – FEDERAL GRANTS/FUNDS***

**COMMITTEE:** **FISCAL ACCOUNTABILITY & GOVERNMENT RELATIONS**

**LINK TO STRATEGIC BLUEPRINT:** **INFORMED, ENGAGED & EMPOWERED STAKEHOLDERS**

Consistent with the Board’s statutory responsibility to periodically review and update its policies to conform to legislative changes and District practices, authorization is requested for the Superintendent to initiate rulemaking proceedings to amend Board Policies 6114, *Cost Principles for Federal Funds*, and 6320, *Purchasing*, and to adopt Policy 6320.07, *Procurement - Federal Grants/Funds*. These amendments have been drafted in collaboration with, and reviewed by, the Superintendent, Cabinet, and District staff of departments that will implement them.

Recent revisions to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), located in Title 2 of the Code of Federal Regulations (2 C.F.R., Part 200), became effective on August 13, 2020 and November 12, 2020. In 2013, the United States Office of Management and Budget (OMB) began revising and streamlining guidance for procurements using federal funds. The intent was to reduce administrative burden and the risk of waste, fraud, and abuse related to federal grant performance. Initial implementation of the Uniform Guidance became effective on December 26, 2014 and must be reviewed every five years. Many of the 2020 revisions were meant to clarify areas of misinterpretation and reduce the burdens on grant recipients by improving consistent interpretation. Based upon the recent revisions, it is recommended that current Board policies related to *Cost Principles for Federal Funds* and *Purchasing* be amended, and a separate federal procurement policy be adopted, to make reference to the distinctive regulations that govern the use of federal funds.

Board Policy 6114, *Cost Principles for Federal Funds*, is proposed for revision to include specific considerations for determining whether a cost is reasonable and necessary; requirements for documenting costs; a definition of “budget period”; reference to allowable selected items of cost; standards for accounting for direct and indirect costs; criteria for obligation of funds; and a more specific definition of “period of performance.”

Board Policy 6320.07, *Procurement - Federal Grants/Funds* is proposed for adoption to reflect specific requirements for procurement with federal funds in accordance with 2 C.F.R., Part 200, consistent with Board Policy 6320, *Purchasing*, and current District practices. The adoption of Policy 6320.07 formalizes requirements to: use a procurement and contract administration system

for federal grants in accordance with the C.F.R.; encourage full and open competition for the acquisition of property or services with federal funds; utilize a domestic preference for United States goods; and maintain procurement records.

Board Policy 6320, *Purchasing*, is proposed for revision to align the policy's content related to federal procurements with a newly adopted Policy 6320.07, *Procurement – Federal Grants/Funds*. The amendments are included for consistency regarding the use of a procurement and contract administration system for federal grants in accordance with the C.F.R.; utilization of a Domestic Preference for United States goods; and maintenance of procurement records for all procurements.

Attached are the Notice of Intended Action and policy amendments. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policies 6114, *Cost Principles for Federal Funds*, and 6320, *Purchasing*, and to adopt Policy 6320.07, *Procurement - Federal Grants/Funds*.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend Board Policies 6114, *Cost Principles for Federal Funds*, and 6320, *Purchasing*, and to adopt Policy 6320.07, *Procurement - Federal Grants/Funds*.

## NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 10, 2021, its intention to amend Board Policies 6114, *Cost Principles for Federal Funds*, and 6320, *Purchasing*, and to adopt Policy 6320.07, *Procurement - Federal Grants/Funds*, at its regular meeting on March 17, 2021.

PURPOSE AND EFFECT: Board Policies 6114, *Cost Principles for Federal Funds*, and 6320, *Purchasing*, are proposed to be amended, and Policy 6320.07, *Procurement – Federal Grants/Funds*, is proposed for adoption, to align Board compliance and District practices with recently updated federal regulations and guidance.

Board Policy 6114, *Cost Principles for Federal Funds*, is proposed for revision to include: specific considerations for determining whether a cost is reasonable and necessary; requirements for documenting costs; a definition of “budget period”; reference to allowable selected items of cost; standards for accounting for direct and indirect costs; criteria for obligation of funds; and a more specific definition of “period of performance.”

Board Policy 6320.07, *Procurement - Federal Grants/Funds* is proposed for adoption to reflect specific requirements for procurement with federal funds in accordance with 2 C.F.R., Part 200, consistent with Board Policy 6320, *Purchasing*, and current District practices. The adoption of Policy 6320.07 formalizes requirements to: use a procurement and contract administration system for federal grants in accordance with the C.F.R.; encourage full and open competition for the acquisition of property or services with federal funds; utilize a Domestic Preference for United States goods; and maintain procurement records.

Board Policy 6320, *Purchasing*, is proposed for revision to align the policy’s content related to federal procurements with a newly adopted Policy 6320.07, *Procurement – Federal Grants/Funds*. The amendments are included for consistency regarding the use of a procurement and contract administration system for federal grants in accordance with the C.F.R.; utilization of a domestic preference for United States goods; and maintenance of a procurement records for all procurements.

SUMMARY: Board Policies 6114, *Cost Principles for Federal Funds*, 6320, *Purchasing*, are proposed for amendment to incorporate updated federal regulations and guidance related to expenditure of federal grant funds. Policy 6320.07, *Procurement - Federal Grants/Funds*, is proposed for adoption to formalize the application of federal regulations and guidance related to expenditure of federal grant funds.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1), (2); 1001.42 (12), (13), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 1001.43(2); 215.971, F.S.; 2 C.F.R., Part 200; 34 C.F.R. 75.703, 76.707, 76.708(a).

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF March 17, 2021 which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by March 10, 2021, to the Superintendent, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by the School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. (Section 286.0105, Florida Statutes)

COPIES OF THE PROPOSED NEW AND AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 102, 1450 N.E. Second Avenue, Miami, Florida 33132.



Book	Policy Manual
Section	February 10, 2021 - <u>Initial</u> Reading
Title	COST PRINCIPLES FOR FEDERAL FUNDS
Code	6114
Status	<u>Initial</u> Reading
Adopted	October 5, 2016

#### 6114 - COST PRINCIPLES FOR FEDERAL FUNDS

The Superintendent is responsible for the efficient and effective administration of Federal grant funds through the application of sound management practices. Such funds shall be administered in a manner consistent with all applicable Federal, State and local laws, the associated agreements/assurances, program objectives, and the specific terms and conditions of the grant award.

#### Cost Principles

Except where otherwise authorized by statute, costs shall meet the following general criteria in order to be allowable under Federal awards:

- A. Be necessary and reasonable for proper and efficient performance and administration of the Federal award and be allocable thereto under these principles.

To determine whether a cost is reasonable, consideration shall be given to:

1. whether a cost is a type generally recognized as ordinary and necessary for the operation of the District or the proper and efficient performance of the Federal award;
2. the restraints or requirements imposed by such factors as sound business practices, arm's length bargaining, Federal, State, local, tribal and other laws and regulations;
3. market prices for comparable goods or services for the geographic area;
4. whether the individuals concerned acted with prudence in the circumstances prevailing at the time the decision was made to incur the cost, considering their responsibilities to the District, its employees, its students, the public at large and the State, Federal, and/or local governments; and
5. whether the cost represents any significant deviation from established practices or policy which may unjustifiably increase the expense.

While Federal regulations do not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, whether a cost is necessary is determined based on the needs of the program. The expenditure must be demonstrably necessary to achieve an important program objective and address an existing need.

When determining whether a cost is necessary, consideration may be given to whether:

1. the cost is needed for the proper and efficient performance of the grant program;
2. the cost is identified in the approved budget or application;
3. there is an educational benefit associated with the cost;
4. the cost aligns with identified needs based on results and findings from a needs assessment;
5. the cost addresses program goals and objectives and is based on program data.

A cost is allocable to the Federal award if the goods or services involved are chargeable or assignable to the Federal award or cost objective in accordance with the relative benefit received.

This standard is met if the cost:

1. is incurred specifically for the Federal award;
  2. benefits both the Federal award and other work of the District and can be distributed in proportions that may be approximated using reasonable methods; and, is necessary to the overall operation of the District and is assignable to the Federal award in accordance with cost principles mentioned here.
- B. Conform to any limitations or exclusions set forth in the~~as~~ cost principles in 2 C.F.R. Part 200 or in the terms and conditions of the Federal award.
- C. Be consistent with policies and procedures that apply uniformly to both Federally-financed and other School Board activities.
- D. Be ~~accorded~~afforded consistent treatment. A cost cannot be ~~allocated~~assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal award~~assigned~~ as an indirect cost under another award.
- E. Be determined in accordance with generally accepted accounting principles.
- F. Be representative of actual cost, net of all applicable credits or offsets.
- G. Not be included as a match or cost-share, unless the specific Federal program authorizes Federal costs to be treated as such.
- H. Be adequately documented in the case of other costs, all receipts and other invoice materials shall be retained, along with any documentation identifying the need and purpose for such expenditure if not otherwise clear.
1. In the case of personal services, the Superintendent shall implement a system for District personnel to account for time and efforts expended on grant funded programs to assure that only permissible personnel expenses are allocated;
  2. In the case of other costs, all receipts and other invoice materials shall be retained, along with any documentation identifying the need and purpose for such expenditure if not otherwise clear. Costs must be incurred during the approved budget period.
- I. Costs must be incurred during the approved budget period.

The budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to carry out authorized work and expend the funds awarded, including any funds carried forward or other revisions pursuant to the law. Prior written

approval from the Federal awarding agency or state pass-through entity may be required to carry forward unobligated balances to subsequent budget periods, unless waived.

### Selected Items of Cost

The District shall follow the rules for selected items of cost at 2 C.F.R. Part 200, Subpart E, when charging these specific expenditures to a Federal grant. When applicable, District staff shall check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, District, and program-specific rules, including the terms and conditions of the award, may deem a cost as unallowable and District personnel shall follow those rules as well.

### Cost Compliance

The Superintendent shall require that grant program funds are expended and are accounted for consistent with the requirements of the specific program and as identified in the grant application. Compliance monitoring includes accounting for direct or indirect costs and reporting them as permitted or required by each grant. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs, but may not be double charged or inconsistently charged as both.

### Determining Whether a Cost is Direct or Indirect:

- A. Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

These costs may include: salaries and fringe benefits of employees working directly on a grant-funded project; purchased services contracted for performance under the grant; travel of employees working directly on a grant-funded project; materials, supplies, and equipment purchased for use on a specific grant; program evaluation costs or other institutional service operations; and infrastructure costs directly attributable to the program (such as long distance telephone calls specific to the program, etc.).

- B. Indirect costs are those that have been incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs.

These costs may include: general data processing, human resources, utility costs, maintenance, accounting, etc.

Federal education programs with supplement-not-supplant provisions must use a restricted indirect cost rate. In a restricted rate, indirect costs are limited to general management costs. General management costs do not include divisional administration that is limited to one component of the District, the governing body of the District, compensation of the Superintendent, compensation of the chief executive officer of any component of the District, and operation of the immediate offices of these officers.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

1. Administrative or clerical services are integral to a project or activity;
2. Individuals involved can be specifically identified with the project or activity;
3. Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and,
4. The costs are not also recovered as indirect costs.

Effort should be given to identify costs as direct costs whenever practical, but allocation of indirect costs may be used where not prohibited and where indirect cost allocation is approved ahead of time by the Florida Department of Education (FLDOE) or the pass-through entity (Federal funds subject to 2 C.F.R. Part 200 pertaining to determining indirect cost allocation). Any limitation or statutory cap on administrative costs applies to the combined claims for indirect costs and direct administration costs.

### **Timely Obligation of Funds**

Financial obligations are orders placed for property and services, contracts and subawards made, and similar transactions that require payment. The term "financial obligations" is used when referencing a recipient's or subrecipient's use of funds under a Federal award.

The following table illustrates when funds are determined to be obligated under the U.S. Department of Education regulations:

If the obligation is for:

- A. Acquisition of property - on the date which the District makes a binding written commitment to acquire the property.
- B. Personal services by an employee of the District - when the services are performed.
- C. Personal services by a contractor who is not an employee of the District - on the date which the District makes a binding written commitment to obtain the services.
- D. Performance of work other than personal services - on the date when the District makes a binding written commitment to obtain the work.
- E. Public utility services - when the District receives the services.
- F. Travel - when the travel is taken.
- G. Rental of property - when the District uses the property.
- H. A pre-agreement cost that was properly approved by the Secretary under the cost principles in 2 C.F.R. Part 200, Subpart E - Cost Principles - on the first day of the project period.

### **Period of Performance**

~~All obligations must occur on or between the beginning and ending dates of the grant project (Period of Performance). The Period of Performance is dictated by statute and will be indicated in the grant award notification (GAN). Obligations may begin, however, prior to the beginning date when an agreement exists with the granting agency. All obligations shall be liquidated as determined by the granting agency.~~

All financial obligations must occur during the period of performance. Period of performance means the total estimated time interval between the start of an initial Federal award when the District is permitted to carry out the work authorized by the grant and the planned end date. The period of performance may include one or more funded portions or budget periods. The Period of performance is dictated by statute and will be indicated in the grant award notification (GAN). As a general rule, State-administered Federal funds are available for obligation within the year for which Congress appropriates the funds. However, the period of performance may vary by grant.

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If

charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

All grant funds shall be liquidated in accordance with timelines required by federal and state regulations, unless an extension is explicitly authorized. Any funds not obligated within the period of performance or liquidated within the appropriate timeframe are said to lapse and shall be returned to the awarding agency. Consequently, the District shall closely monitor grant spending throughout the grant cycle.

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Legal

- 2 C.F.R. 200.344(b)
- 2 C.F.R. 200.403-.406
- 2 C.F.R. 200.413(a)-(c)
- 2 C.F.R. 200.431(a)
- 2 C.F.R. 200.458
- 2 C.F.R. 200.474(b)
- 34 C.F.R. 75.703
- 34 C.F.R. 76.707
- 34 C.F.R. 76.708(a)





Book	Policy Manual
Section	February 10, 2021 - <u>Initial</u> Reading
Title	PURCHASING
Code	6320
Status	<u>Initial</u> Reading
Adopted	May 11, 2011
Last Revised	August 12, 2020

### 6320 - **PURCHASING**

All procurement of supplies, materials, equipment, and services paid for from county school funds shall be the responsibility of the procurement department under the general supervision of the Chief Procurement Officer and shall be made in accordance with all applicable State statutes, Florida State Board of Education Rules, School Board policies, and administrative procedures.

No person may make any purchase with Board funds unless authorized to do so by Board policy or by administrative directive, or manuals approved by the Superintendent.

The agency designated for making purchases with Board funds is the Board's Procurement Management Services.

Payment for any unauthorized purchase(s) may be the responsibility of the person placing the order.

#### **Definitions**

- A. *Commodity Code* - system of words, numbers, or both, designed to identify and list goods and services by classes and subclasses.
- B. *Competitive Solicitation* - purchasing made through the issuance of an invitation to bid, request for proposals, and invitation to negotiate.
- C. *Construction Services* - all labor, services, and materials provided in connection with the construction, alterations, repair, demolition, reconstruction, or any other improvements to real property.
- D. *Cooperative Purchasing* - action taken when two (2) or more entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits. Cooperative procurement efforts may result in contracts that other entities may "piggyback".
- E. *Invitation to Bid* - a written solicitation for competitive sealed bids used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required.

- F. *Invitation to Negotiate* - a written solicitation for competitive sealed replies to select one (1) or more vendors with which to negotiate for the procurement of commodities or contractual services used when the Board determines that negotiations may be necessary to receive the best value.
- G. *Originating Department* - the department requesting informal and/or formal solicitations. This department is responsible for the product and/or services sought and for monitoring vendor performance.
- H. *Purchasing Cards (PCards)* - a payment method in which School District requisitioners purchase directly from a vendor using a credit card; a pre-established credit limit is generally established for each card issued.
- I. *Procurement Authority* - documentation establishing that a purchase requisition, PCard, fund reservation, or draft contract adheres to the competitive bidding process or meets criteria for an exemption in this policy.
- J. *Proposer* - vendors submitting bids or responses to a competitive solicitation.
- K. *Request for Information* - a non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for input from interested parties for an upcoming solicitation. A procurement practice used to obtain comments, feedback, or reactions from potential suppliers (contractors) prior to issuing of a solicitation. Generally price or cost is not required. Feedback may include best practices, industry standards, technology issues, etc.
- L. *Request for Proposals* - a written solicitation for competitive sealed proposals used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
- M. *State Appropriated Funds* - funds appropriated in the Florida General Appropriations Act, excluding Federal funds; does not include general obligation bond funds for capital construction or funds raised through local capital outlay millage.
- N. *Unauthorized Purchases* - an agreement, a commitment, or an order for goods or services, construction, or changes to existing contracts, by any person who does not have an approved purchase order, fund reservation, and/or PCard approval, and includes (1) purchases made without the required competitive bidding, (2) purchases made in advance of an approved purchase order, fund reservation, and/or PCard approval, and (3) changes under existing contracts made by a person who does not have delegated procurement authority.
- O. *Vendor File* - accumulated record of a vendor maintained by Procurement Management Services, including information on the vendor's relationship with the Board, application for inclusion on the bidder's list, record of performance under contracts, and correspondence.
- P. *Small Business Enterprise (SBE), Micro Business Enterprise (MBE), Minority/Women Business Enterprise (M/WBE), and Veteran Business Enterprise (VBE)* are defined by Board Policy 6320.02.

## **Purchase Approval and Competitive Bidding Process Requirements**

### **Responsibilities**

The Superintendent shall be responsible for the procurement of supplies, materials, equipment, and services paid for from Board funds. The several schools, departments, and agencies of the District under the jurisdiction of the Board shall purchase their materials or commodities through the Procurement Management Services, the Board's official purchasing agency. All purchases shall comply with law, rules, regulations, and Board policies. The Superintendent may approve or reject purchase requisitions when the total amount does not exceed \$50,000 or the current threshold set by statute. Purchases in excess of \$50,000 or current threshold set by statute shall be approved by the Board except for those delineated below:

- A. Where the purchasing agent for any public agency is authorized by law to make purchases for the benefit of other governmental agencies within the county, the Board shall have the option to purchase under the current contracts as established for these public agencies at or below the stated unit price, if the purchase is economically advantageous to the Board, and the items purchased conform to the standards and specifications prescribed by the Superintendent.
- B. As required by F.S. 1001.42(12)(j), the Board shall receive and consider available prices according to the rules of the Department of Management Services, Division of Purchasing. The Board may use prices established by the Division of Purchasing through its State purchasing agreement price schedule. If Board policy provides for purchasing under this State purchasing program, the conditions for use shall be those imposed on State agencies.
- C. In lieu of requesting competitive solicitations from three (3) or more sources, the Board may make purchases at or below the specified prices from contracts awarded by other city or county governmental agencies, other school boards, community colleges, Federal agencies, the public or governmental agencies of any state, or from State university system cooperative bid agreements, when the proposer awarded a contract by another entity permits purchases by a school board on the same terms, conditions, and prices (or below such prices) awarded in the contract, and the purchases are economically advantageous to the Board.
- D. The requirement for requesting competitive solicitations for commodities or contractual services from three (3) or more sources is waived pursuant to F.S. 1010.04(4)(a), for:
1. the purchase by the Board of professional services which shall include artistic services, academic program reviews, lectures by individuals, auditing services not subject to F.S. 218.391, legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; procurements which render competitive bidding impractical; and
  2. the purchase by the Board of educational services and copyrighted materials including educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, DVDs, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where these materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent with the State, a governmental agency or a recognized educational institution.
- E. The purchase of food products except milk, required for the School Food Service Program and other ancillary food operations are exempt from the bid requirements pursuant to State Board of Education Rule F.A.C. 6A- 7.0411(2)(i)2.
- F. Additional exemptions authorized under certain conditions:

The requirements for requesting competitive solicitations and making purchases for commodities and contractual services are waived pursuant to F.S. 1010.04(4)(a), when the following conditions have been met by the Board:

1. competitive solicitations have been requested in the manner prescribed by this rule, and
2. the Board has made a finding that no valid or acceptable firm proposal has been received within the prescribed time.

When such a finding has been officially made, the Board may enter into negotiations with suppliers of such commodities and contractual services and shall have the authority to execute contracts with such vendors under whatever terms and conditions the Board determines are in its best interests.

If fewer than two (2) responsive proposals for commodity or contractual services are received, the Board may negotiate the best terms and conditions or decide to reject all proposals. The Board shall document the reasons that negotiating terms and conditions with the sole proposer is in the best interest of the School District in lieu of soliciting new proposals.

- G. Commodities or contractual services available from a single source may be exempted from the competitive solicitation requirements. When the Board believes that commodities or contractual services are available only from a single source, the Board shall electronically or otherwise publicly post a description of the commodities or contractual services for a period of at least seven (7) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the Board, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the Board shall provide notice of its intended decision to enter a single source contract in the manner specified in F.S. 120.57(3), and may negotiate the best terms and conditions with the single source vendor.
- H. A contract for commodities or contractual services may be awarded without competitive solicitations if State or Federal law, a grant or a State or Federal agency contract prescribes with whom the Board must contract or if the rate of payment is established during the appropriations process.
- I. A contract for regulated utilities or government-franchised services may be awarded without competitive solicitations.
- J. Except as otherwise required by statute, the Board, when purchasing insurance, entering risk management programs, or contracting with third party administrators, may use the competitive solicitation process or direct negotiations and contract.
- K. The Board may dispense with requirements for competitive solicitations for the emergency purchase of commodities or contractual services when the Superintendent determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the School District requires emergency action, pursuant to F.A.C. 6A-1.012(12)(e). After the Superintendent makes such written determination, the Board may procure commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors, which must be retained in the contract file, unless the Superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the District.
- L. Emergency purchases made and approved by the Superintendent or the Superintendent's designated representative. The Superintendent will report all emergency purchases to the Board, as soon as possible.

When an emergency arises, circumstances contributing to such an emergency shall be communicated to the proper department or agency of the Board, which in turn will notify Procurement Management, requesting the emergency purchase.

A requisition for an emergency purchase shall be accompanied by the appropriate Emergency Purchase Request Form, explaining the circumstances creating the emergency and clarifying that immediate action is required to protect the Board's interests. Emergency purchases are divided into two (2) categories as follows:

1. Emergency Purchase Request (Form B FM-3739) estimated expenditure \$50,000 and under requires the signature of the initiating administrator, recommended by Director or above and approval by the Assistant Superintendent or above.
2. Emergency Purchase Request (Form A FM-2333) estimated expenditure over \$50,000 requires the signature of the initiating administrator, recommended by the Assistant Superintendent or above, or

his/her designee(s) and approval by Superintendent or designee. Emergency purchases over \$50,000 shall be reported to the Board.

M. Competitive bidding is waived for purchases of maintenance and/or service contracts, on various types of technical equipment, that are offered and/or supplied only by the original manufacturer or its representative, or that are required to maintain the integrity of the manufacturer's warranty, or that are part of the manufacturer's rental/lease/lease purchase agreements terms and conditions.

N. Non-Purchase Order Invoice Funds Reservation Purchases/Check Requests are purchases for goods and services, expenditures, fund transfers, etc., that are not appropriate for normal competitive purchasing procedures. Periodically, these purchases shall be reviewed by procurement staff to ensure compliance with this Board policy. Only the expenditures listed below will be authorized and processed as Non-Purchase Order Invoice Funds Reservation/Check Requests Purchases. Non-Purchase Order Invoice Funds Reservation/Check Requests purchases require the same financial authorization and approval process as purchase requisitions and shopping carts. Those purchases for goods and services, expenditures, fund transfers, etc., that are authorized for Non-Purchase Order Invoice Funds Reservation/Check Requests Purchases are limited to include various types of fund advances, services, reimbursements and purchases, and/or payment for goods and services, which are not appropriate for normal competitive purchasing procedures:

1. additional services where a professional service contract is not required or there is no bid in place (polygraph, transcribing, etc.)
2. employee related admission/registration fees to workshops and conferences that are not expensed to out-of-county travel (all out-of-county travel must be entered through and approved by the travel system process)
3. association fees, professional association dues, academy certification requirements and District membership to organizations
4. internal distribution of funds to school athletic programs, vending machine commissions, diplomas, and savings programs
5. District rental/lease of facilities
6. all utility service, connection charges, and fees
7. graduation program fees (non-employees, union charges, etc.), including facility rental, equipment requirements, foliage rental, non-employees, and union charges
8. tickets, and admissions to parks, registration fees for competitions, and hotel accommodations, not done through a travel agency
9. groceries and supplies for educational use in alternative programs or academic requirements
10. media advertising (newspaper, radio, television, brochures, pamphlets, etc.)
11. grant authorized workshop reimbursements including refreshments
12. petty cash replenishment
13. postage requisitions
14. toll charges for authorized District departments
15. travel reimbursement for non-employees

- O. Contracts for legal services by the Board attorney and the attorneys supervised by the Board attorney, contracted third party claims administration, nonpublic school placements and other services/goods for which selection procedures are provided by State statute, State Board rule, or other Board policy.
- P. The Professional Services Contract Committee (PSCC) may consider requests for exceptions from competitive bidding. The PSCC shall be comprised of representatives, as stated in the attendee requirements for an evaluation committee. The PSCC may grant exceptions for sole source contracts, contractors having specific expertise, or as otherwise determined by the PSCC to be in the best interest of the Board. The PSCC will be used in extenuating circumstances only. For contracts with an annual estimated cost of more than \$50,000, exceptions recommended by the PSCC must be approved by the Board.
- Q. Procurement Management Services staff will provide the Board a quarterly written expenditure report of purchases made using the exemptions above and that exceed \$100,000.00. The report shall include date of purchase, vendor, amount, funding source, and purchasing authority.
- R. The Board shall have the authority to reject any or all proposals submitted in response to any competitive solicitation and to request new proposals or purchase the required commodities or contractual services in any other manner authorized by this section.

As much as practicable, all purchases shall be based on contracts, purchasing card systems, electronic procurements, or purchase orders.

- S. The Board, when acquiring, whether by purchase, lease, lease with option to purchase, rental or otherwise, information technology, as defined in F.S. 282.0041(14), may make acquisitions through the competitive solicitation process or by direct negotiation and contract with a vendor or supplier, as fits the needs of the School District as determined by the Board.
- T. The Superintendent may be authorized to purchase commodities or contractual services where the total amount does not exceed an amount prescribed by the Board and does not exceed the applicable appropriation in the District budget. The Superintendent may also be authorized to purchase commodities or is exempt by statute or Florida Administrative Code, or contractual services under Department of Management Services State term contracts. The Superintendent may authorize designated staff to perform these purchasing tasks.
- U. In accordance with State law and Policy 6327, Public-Private Partnerships and Unsolicited Proposals, the Superintendent may submit proposed public-private partnership agreements for qualifying projects, including those resulting from unsolicited proposals, to the Board for consideration. The Superintendent and Board shall evaluate and consider all proposed public-private partnership agreements according to the guidelines in F.S. 255.065 and Policy 6327.

### **Competitive Bidding Requirement**

#### **A. Invitation to Bid (ITB)**

Invitation to Bid may be used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required.

The following process shall be followed for an ITB:

1. For contracts estimated to be more than \$50,000 annually:
  - a. In accordance with Board Policy 6320.02, the Goal Setting Committee (GSC) shall review the summary scope of work to determine SBE, MBE, M/WBE, or VBE participation in the project.

b. The ITB shall be advertised to solicit maximum vendor participation. To enhance SBE, MBE, M/WBE, or VBE participation, advertisements may be published and announced in major publications that serve minority communities; however, it shall be posted electronically.

2. The ITB shall include an implementation schedule consisting of the following:

- a. GSC meetings;
- b. mailing/posting date;
- c. pre-proposal conference (if required);
- d. opening date and time documented by bid opening minutes;
- e. evaluation and tabulation of bid;
- f. recommendation of award process to the Board; and
- g. award notification is provided to all awarded bidder(s).

3. The Board may accept the proposal of the lowest responsive, responsible proposer. Alternatively, the Board may award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardee(s) from whom commodities or contractual services would be purchased should the primary awardee become unable to provide all of the commodities or contractual services required by the Board during the term of the contract. Multiple awards to the lowest responsive and responsible bidders are permitted when multiple awards are clearly allowed by the bid solicitation documents. Also, awards shall be made to preapproved vendor(s), where price is not an evaluation factor and bidders are responsive to other factors noted within the solicitation document.

4. When the determination is made that a bid is appropriate, the performance specifications and standard requirements shall be stated in detail and shall be furnished to Procurement Management Services by the originating department. After review, Procurement Management Services shall issue the invitation to bids, including all general and special conditions, and evaluate the bids submitted. The requirements for solicitation and review of bids by the Goal Setting Committee (GSC) shall be followed in all cases. Board approval is required for contracts recommended for award.

5. For each purchase of more than \$50,000, bids shall be noticed publicly to ensure open competition. Notices of bids shall be electronically posted or may be sent to all vendors on the active vendor mailing list(s) per commodity code(s). This list shall include all SBE, MBE, M/WBE, or VBE vendors, identified by the Board in accordance with Policy 6320.02, for that particular category of goods or services, as well as organizations involved in assisting SBE, MBE, M/WBE, or VBE. Notices of bids shall be advertised in one (1) or more major local newspapers or electronically posted at least seven (7) days prior to the bid opening date. This may include, as necessary, major newspapers having circulation representative of the various relevant minority classifications or electronic posting. Tabulations of current bids shall be retained in bid files and shall be available for reference. Standard bid forms used shall be those reviewed and approved by the Board attorney's office.

6. Any additional evaluation criteria, such as small or micro-business enterprise, minority and/or veteran preferences that are referenced in the solicitation document shall be reviewed and evaluated.

#### B. Request for Proposals (RFP)

The Board may award contracts to one (1) or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The Board is not required to solicit request proposals for purchases made from contracts of the Department of Management Services.

The RFP shall be used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

In acceptance of responses to requests for proposals, district school boards may award contracts to one or more responsive, responsible proposers in accordance with the selection criteria published in the request for proposal. The district school board is not required to request proposals for purchases made from contracts of the Department of Management Services.

The following process shall be followed for an RFP:

1. For contracts estimated to be more than \$50,000 annually:
  - a. In accordance with Board Policy 6320.02, the GSC shall review the RFP to determine SBE, MBE, M/WBE, or VBE participation in the project.
  - b. The RFP shall be advertised to solicit maximum vendor participation. To enhance SBE, MBE, M/WBE, or VBE participation, advertisements may be published and announced in major publications that serve minority communities and it shall be posted electronically.
2. The RFP shall include an implementation schedule consisting of the following:
  - a. GSC meetings,
  - b. mailing/posting date,
  - c. pre-proposal conference (if required),
  - d. opening date and time documented by bid opening minutes,
  - e. oral presentations (if required),
  - f. recommendation of award process and to the Board,
  - g. award notification is provided to all awarded bidder(s).
3. The evaluation criteria shall include, but are not limited to:
  - a. technical qualifications and conformance to the proposal requirements experience,
  - b. past performance,
  - c. price considerations,
  - d. small or micro-business, minority, and/or veteran business participation, and
  - e. other instructions specific to RFP.

C. Invitation to Negotiate



The Invitation to Negotiate (ITN) shall be used as a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. This method is used when the Board determines that negotiations may be necessary to receive the best value. The following but not limited to criteria may be used to determine if an ITN is the best procurement methodology:

1. The District cannot accurately and completely define the scope of work for the contract, which often occurs for acquisitions of rapidly changing technology, outsourcing, or complex services;
2. The goods or services can be provided in several different ways, any of which could be acceptable, which occurs for acquisition of emerging technologies or complex services;
3. Contractor qualifications and the quality of the goods or services to be delivered can be considered more important than the contract price;
4. The responses may contain innovative solutions that differ from what the District may have requested and this process allows for those types of alternatives to be considered; and
5. The responses may contain a different level of goods or services than that requested, requiring the negotiation to reduce price or services to match.

Invitations to Negotiate shall follow the process noted above for RFPs.

D. Evaluation Committee Meetings for RFPs and ITNs Only

1. The committee shall consist of at least: 1) two (2) individuals from the originating department; however, not more than one (1) of these individuals can be from the requesting department bureau; 2) two (2) individuals from outside the requesting department; 3) one (1) individual from the Office of Economic Opportunity; and 4) one (1) individual from Procurement Management Services (non-voting). Additional members may be appointed at the discretion of the Chief Procurement Officer. The committee shall to the extent possible, be ethnically and gender representative.
2. These meetings are subject to F.S. Chapter 286 except for meetings in which the vendors will be making oral presentations and answering questions as part of the solicitation process which shall be closed to the public in accordance with F.S. 286.0113(2)(b)(1).
3. When committees are established to evaluate a RFP or ITN, the Procurement Management Services staff will conduct the meetings, and ensure that: 1) minutes are recorded, and 2) proper documentation and records of committee actions are maintained.
4. The evaluation committee's written recommendation must include the following for inclusion in the master bid file within Procurement Management Services:
  - a. clear objective of the RFP,
  - b. identification of the committee members,
  - c. committee meeting dates and brief synopsis of the general discussion,
  - d. dates of any or all oral presentations,
  - e. name and location of the offeror(s),
  - f. evaluation criteria,
  - g. explanation of the basis for selection,

- h. recommendation of acceptance of the offeror(s) proposal,
- i. committee member votes or tabulation results.

5. When the committee evaluation process is complete, the Superintendent will forward the recommendations to the Board for approval before any contract will be issued.

E. Written or Electronic Quotations (Request for Quotes)

For each purchase of \$50,000 or less and over the minimum quotation threshold established by Procurement Management Services, staff shall obtain written, telephone, or electronic quotations from three (3) or more sources. If possible, vendors contacted shall include SBE, MBE, M/WBE or VBE vendor participation. If only one (1) of those sources respond with prices, two (2) additional sources, if available, may be contacted for pricing, including, if possible, an SBE, MBE, M/WBE or VBE vendor. If no additional prices are obtained from those sources, the award shall be made to the vendor who submitted the lowest and best price quotation. If all three (3) of the vendors first contacted for prices respond with valid price quotations, the award shall be made to the vendor who submitted the lowest price quotation meeting the bid specifications, with no additional requests from other vendors required.

Quotations obtained shall be electronically attached to or included with the purchase order. by written notations or electronic reference indicating quotation prices and sources, certification by signature or facsimile. The requisition shall be approved for purchase as authorized by the Superintendent. All internal fund purchases shall comply with Policy 6610.

F. Purchasing Thresholds for Competitive Bidding

The following provides a summary of the purchasing thresholds and the corresponding procurement documents allowed to facilitate the purchases:

1. \$0 to \$999 - shall obtain one (1) written and dated quotation, with an applicable expiration date such as ninety (90) days.
2. \$1,000 to \$50,000 - shall obtain three (3) written, telephonic, or electronic and dated quotation(s), which may be completed using a Request for Quotes template.
3. Above \$50,000 shall utilize the Invitation to Bid, Invitation to Negotiate, or the Request for Proposal template(s).

G. Development of Specifications, Determination of Quantities, and Standardization of Supplies and Equipment

1. To achieve both quality control and the price advantages of quantity purchasing, the administration shall:
  - a. establish specifications for goods and services as needed;
  - b. identify several existing, commercially available "standard brands-" that meet the specifications acceptable as examples; and
  - c. invite vendors to bid on the standard brands identified or their equivalent.
2. All bid quantities and specifications shall be transmitted to Procurement Management Services by the originating department in writing. The originating department shall also certify to Procurement Management Services in writing that the specifications for an existing bid (to be rebid) are still appropriate before issuance of the bid. Specifications originated by Procurement Management

Services shall follow similar certification procedures.

3. All increases to quantities specified in an existing term bid requiring a supplemental bid award shall be requested in writing by the originating department, countersigned by an administrator reporting directly to the Superintendent, and identifying the reason why the increase in quantities was unavoidable. If an adequate reason cannot be identified, then the corrective action to be taken by the originating department to prevent a future underestimate of quantities shall be described. A similar procedure will be followed for term bids originated by Procurement Management Services.
4. All changes to specifications for an existing bid (to be rebid) or similar bid shall be identified in writing, including the reason for the change, by the originating department or Procurement Management Services if it is the originator.
5. The Chief Procurement Officer of Procurement Management Services shall identify specifications which appear to limit the bidding process to a single vendor. In the event that the Chief Procurement Officer has identified such a set of specifications, the originating department shall be required to justify in writing the specifications which appear to favor a single vendor. This documentation shall be countersigned by an administrator reporting directly to the Superintendent.

#### H. Federal Grants/Funds

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with [Board Policy 6320.07 and](#) all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, School Board policies, and administrative procedures.

The Superintendent shall ~~have and use~~[maintain](#) a procurement and contract administration system in accordance with the requirements of 2 C.F.R. 200.317-200.326 for the administration and management of Federal grants and Federally-funded programs. The District shall maintain ~~oversight~~[a contract administration system](#) that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of this policy.

The District shall take affirmative steps, [in accordance with Federal regulations](#), to assure that [firms certified pursuant to Board Policy 6320.02](#)~~small and minority businesses, women's business enterprises,~~ and [applicable](#) labor surplus area firms, are used when possible.

The District shall comply with any limitations or exclusions set forth as cost principles in 2 C.F.R. Part 200 or in the terms and conditions of the Federal award.

#### Domestic Preference for Federal Procurement:

[As appropriate and to the extent consistent with law, the District shall, to the extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards including all contracts and purchase orders for work or products under the Federal award.](#)

#### D. Purchase Requisitions

District schools, departments, and agencies shall initiate a properly executed purchase requisition, containing authorized approvals of the originating administrator, principal, department or agency head, for the purchase of any and all items desired, except where small purchases, transactions not in excess of \$3,000.00 per requisition, and market difficulties, make the cost of some purchases in this manner economically unsound. In those instances, administrative directives or operating manuals may be issued, when deemed necessary, containing the procedures to economically perform the purchasing function within the controls required and authority provided by Florida statute, Florida Board of Education Administrative Rules and Board policies.

Split requisitions, to bypass the approval requirements and/or the bidding process, are specifically forbidden.

Requisitions must contain the appropriate authorized approvals as prescribed by administrative procedures for the SAP system, as well as documented procurement authority. Fully approved requisitions will be reviewed and approved by procurement staff to ensure proper application of this policy and will be converted to approved purchase orders for release to the vendors.

#### E. Unauthorized Purchases

As defined, unauthorized purchases are agreements, commitments, or an order for goods or services or construction, or changes to existing contracts by any District staff and/or school site staff who does not have an approved purchase order, fund reservation and/or PCard approval. Also unauthorized are (1) purchases made without the required competitive bidding, (2) purchases made in advance of an approved purchase order, fund reservation and/or PCard approval, and (3) changes under existing contracts made by a person who does not have delegated procurement authority.

Unauthorized purchases are not binding on the District. Payment for any unauthorized purchase may be the responsibility of the staff person placing the order. Additional disciplinary action may be taken against the responsible staff person.

For each suspected incident of an unauthorized purchase, procurement staff will notify the staff person(s) involved and request appropriate documentation to authorize or cancel the purchase and to ensure future compliance with this policy.

#### F. Protests

A bidder, who wishes to file a bid protest, must file such notice and follow procedures prescribed by F.S. 120.57(3) and Bylaw 0133, for resolution.

#### G. Protest of Specifications

Any notice of protest of the specifications contained in an Invitation to Bid (ITB) or Request for Proposal (RFP) or Invitation to Negotiate (ITN) shall be filed accordance with Board Bylaw 0133.

For a protest of the specifications contained in an Invitation to Bid (ITB) or in a Request for Proposals (RFP) or Invitation to Negotiate (ITN), the Notice of Protest shall be filed in writing within seventy-two (72) hours after the posting of a solicitation. The Formal Written Protest shall be filed within ten (10) calendar days after the date the notice of protest is filed. Failure to file a Notice of Protest or failure to file a Formal Written Protest shall constitute a waiver of proceedings under this rule. The Formal Written Protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period provided by this paragraph.

#### H. Posting the Bond

The protesting party shall post a bond in a form consistent with F.A.C. Rule 28-110.005(2). A notice of decision or intended decision shall contain this statement: "Failure to file a protest within the time prescribed in F.S. 120.57(3), or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceeding under F.S. Chapter 120."

1. Bond: Commodities (Other than Lease of Space) and Contractual Services (Including Professional Services and Insurance) – Pursuant to F.S. 287.042(2)(c), any person who files an action protesting a decision or intended decision pertaining to a solicitation or contract award shall post

with the Board, at the time of filing the formal written protest, a bond secured by an acceptable surety company in Florida, payable to The School Board of Miami-Dade County, Florida, in an amount equal to one percent (1%) of the District's estimate of the dollar value of the proposed contract.

- a. The District shall provide the estimated contract amount to the protestor within seventy-two (72) hours (excluding Saturdays, Sundays, and holidays when the District administrative office is closed) after the filing of the Notice of Protest. The estimated contract amount is not subject to protest under this policy or F.S. 120.57(3). In lieu of a bond, the Board may accept a cashier's check or money order in the amount of the bond.
  - b. The bond shall be conditioned upon the payment of all costs and charges which may be levied against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.
  - c. Pursuant to F.S. 287.042(2)(c), if, the Board prevails in the administrative hearing process and any appellate court proceedings, it shall be entitled to recover all costs and charges which are included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the person protesting the decision or intended decision or contract award, the bond, cashier's check, or money order shall be returned to the protestor. If the protestor prevails, the protestor may recover from the Board the costs and charges which are included in the final order or judgment, excluding attorneys' fees.
2. Bond: Competitive Bids for Lease of Space -- Pursuant to F.S. 255.25(3) (c), any person who files an action protesting a decision or intended decision pertaining to a competitive bid for space to be leased by the Board shall post with the Board, at the time of filing the formal written protest, a bond payable to the Board in an amount equal to one percent (1%) of the estimated total rental of the basic lease period or \$5,000, whichever is greater. The bond shall be conditioned upon the payment of all costs which may be levied against him/her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. If the Board prevails in the administrative hearing process and any appellate court proceedings, it shall recover all costs and charges, which are included in the final order or judgment, excluding attorneys' fees. Upon payment of such costs and charges by the person protesting the award, the bond shall be returned to him/her. If the person protesting the award prevails, the bond shall be returned to that person and s/he shall recover from the Board the costs and charges which are included in the final order or judgment, excluding attorneys' fees.
  3. Bond: Construction Purchasing – Construction purchasing is separately governed by Board policy, and persons protesting competitive procurement related to educational facilities shall be required to post a bond in the amount specified in F.S. 255.0516, which also governs recovery of fees and costs including attorneys' fees.
  4. Staying the Procurement Process – Upon timely receipt of the formal written protest petition, and posting of the bond, the solicitation or contract award process shall be stayed until the protest is resolved by final agency action, unless the Board sets forth, in writing, particular facts and circumstances which require the continuance of the solicitation or contract award process in order to avoid an immediate and serious danger to the public health, safety, and welfare.

#### I. Protest of Bid Award

Any person who is adversely affected by the Board's decision or intended decision, shall file a Notice of Protest in writing with the Clerk of the Board, who shall maintain an office in the Board Administration building, within seventy-two (72) hours after the posting of the bid tabulation or after receipt of the notice of the Board's decision or intended decision and shall file a Formal Written Protest within ten (10) calendar days after filing the Notice of Protest. The protesting bidder shall also be required to post a bond, consistent with this rule. Failure to file a Notice of Protest or failure to file a Formal Written Protest

shall constitute a waiver of proceedings under F.S. Chapter 120.57. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and legal holidays shall be excluded in the computation of the seventy-two (72) hour time period provided by this paragraph.

The Formal Written Protest will be reviewed by Procurement Management Services, who will offer the protesting bidder the opportunity to meet and discuss the merits of the protest within seven (7) days, excluding Saturdays, Sundays, and State holidays upon receipt of the formal written protest and bond. If the protest is not resolved, the matter may be referred for proceedings, pursuant to F.S. 120.569 and 120.57. Petitions for hearing on protests pursuant to F.S. 120.569 and 120.57 must be filed in accordance with Board Bylaw 0133 on quasi-judicial proceedings.

Upon receipt, the Board Clerk shall forward a copy of any Notice of Protest to the Board. After a Notice of Protest is filed, the Clerk shall notify the Board upon receipt of a Formal Written Protest, and shall also notify the Board if no Formal Written Protest is submitted after the statutory time period for filing a Formal Written Protest has elapsed. The Clerk will inform the Board of the final resolution of any Formal Written Protest, regardless of whether the resolution involved a formal administrative hearing. If the resolution involved a formal administrative hearing, the Board will be informed of the results in accordance with Policy 0133, Quasi-Judicial Proceedings.

#### J. Receiving and Opening of Bids

The Superintendent, or an administrator designated by the Superintendent, shall designate the time and place for receiving and opening of bids.

1. Except for construction solicitations, bids are to be submitted to Procurement Management Services or electronically up to the time and on the date specified in the bid documents. Bids received after the date and hour specified in the bid documents will not be considered.
2. At least two (2) Procurement Management Services staff will be assigned to facilitate the public bid opening.
3. All bids will be recorded at the time they are received, showing the bid number, bid title, and the names of the bidders submitting bid forms. Notification of timely receipt shall be confirmed by the bid opening minutes and submitted to the Board at the next regularly scheduled Board meeting.

The above guidelines for receiving bids do not apply to the awarding of bids at Board meetings.

#### P. The Recording or Tabulation of Purchasing Bids

The names of bidders, the prices submitted, and such other pertinent data, will be electronically available or entered on a tabulation sheet by Procurement Management Services. This information shall be available as set forth in F.S. 119.07.

#### Q. Rejection of Bids

The right to reject any and all bids is reserved by the Board and such reservation shall be indicated in all advertising and invitations. When bids are rejected and the project or requirement is not abandoned, new bids may be issued. Bids which contain any alterations or erasures may be rejected. Bids will be rejected for good and sufficient cause, such as faulty specifications, excessive cost, and abandonment of the requirements, insufficient funds, or other irregularities. Bids may be rejected for failure by the bidder to comply with any requirement stated in the bid document, the bid proposal form, or any attachments which become part of the bid.

#### R. Irregular or Deviating Bids

In the event that Procurement Management Services wishes to make a recommendation of an award of a bid to a bidder who has deviated from specifications, or in which there is any irregularity, the report recommending such an award should contain in detail: the manner in which the bid deviates from the specifications or is irregular, the reasons for the recommendation of the award, and approval by the Board Attorney.

S. Award Recommendation

Notice of Intended Action will be posted on the District's website for Procurement bids no later than the Friday preceding the week when the award is scheduled to be made by the Board or Superintendent.

T. Official Award Date

Awards become official when made, unless otherwise specified in the award recommendation.

U. Contract Renewals

The Board shall have the authority to award bids and reject any or all bids. The Superintendent shall have the authority to exercise, in subsequent years, any renewal options included in a bid solicitation, provided terms and conditions are favorable for the School District and subject to the availability of funds.

V. Legal Basis for Procedures

The procedures for the purchase of commodities and services, and construction of facilities for the District shall comply with the Florida statutes and the Florida Administrative Code.

W. Bidding

It is the policy of the Board that the Superintendent shall be responsible for estimating needs for items in common use and making quantity purchases. All items, or group of related items that cost in excess of the amount defined in F.A.C. 6A-1.012(6), shall be purchased based on competitive bids, except as otherwise authorized by Florida statutes and/or Florida Administrative Code.

X. Identical Prices/Points--Priorities for Award

When identical prices/points are received from two (2) or more vendors/firms and all other factors are equal, priority for award shall be given to vendors/firms in the following sequence:

1. A business that certifies that it has implemented a drug-free work place program shall be given preference in accordance with the provisions of F.S. 287.087;
2. Local vendor as defined by Board Policy 6320.05;
3. Certified service-disabled Veteran business;
4. A certified Minority/Women Business Enterprise vendor;
5. The Miami-Dade County SBE/Micro/Minority/Women Business Enterprise vendor;
6. The Broward, Palm Beach or Monroe County SBE/Micro/Minority/Women Business Enterprise vendor;
7. The Broward, Palm Beach or Monroe County vendor, other than the SBE/Micro/Minority/Women Business Enterprise vendor;

8. The Florida vendor who is a SBE/Micro/Minority/Women Business Enterprise vendor;
9. The Florida vendor, other than a Minority/Women Business Enterprise vendor;
10. The Minority/Women Business Enterprise vendor, who, because of lower prices, receives a larger dollar award for other items; and
11. The SBE/Micro/non-Minority/Women Business Enterprise vendor who, because of lower prices, receives a larger dollar award for other items.

In accordance with Florida law, local preference shall not be applied to competitive solicitations for construction services in which fifty percent (50%) or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation. The solicitation documents for construction services in this event must disclose that no local preference consideration will be applied.

If application of the above criteria does not indicate a priority for award or cannot be applied by law, Board administration shall determine if the award is capable of being split, and, if the vendors will agree to split the award. If the award cannot be split, or the vendors do not agree to split the award, the award will be decided by the toss of a coin. The toss of a coin shall be held publicly, with the tie low bid vendors invited to be present as witnesses and participants. The Chief Procurement Officer or a staff member from the Office of Procurement Management will preside over the coin toss and a member from Internal Audits will observe.

#### Y. Vendor Preference for Certified Service-Disabled Veteran Business Enterprises

The Board provides a vendor preference for certified service disabled veteran businesses in accordance with Board Policy 6320.02 and State law.

In assessing priorities for award, when identical prices are received from two (2) or more vendors and all other factors are equal, priority for award shall be given to a certified service-disabled veteran business enterprise as defined by F.S. 295.187 and Policy 6320.02. In the event there are two (2) or more certified-disabled veteran business enterprises entitled to the preference, then the award shall be given to the business having the smallest net worth.

The vendor preference for certified service-disabled veteran businesses shall be subordinate only to the vendor preference for businesses implementing a drug-free workplace.

The Board's goal for participation by service disabled veteran business enterprises shall be established at three percent (3%) of the total value of all prime contract/subcontract awards for each fiscal year.

#### Z. Performance and Payment Security, Default and Bonding Company Qualifications

##### 1. Performance Security on Construction Bids and Awards

- a. Bid bond of five percent (5%) of the total bid amount is required.
- b. In order to encourage participation in construction, remodeling, and renovation projects by small, woman owned, and minority owned businesses, at the option of the Board, no bid security or performance or payment bond shall be required for bids in an amount less than \$200,000.
- c. Bid awards exceeding \$200,000 require a 100% performance and payment security of the award amount. For construction projects costing \$200,000 or more, the accepted bidder must deliver performance and payment bonds equal to the contract price, no later than twenty (20) days after the date of award of the contract or Approval of the Guaranteed Maximum Price (GMP) Amendment by the Board. Bonds must be issued by surety



companies admitted to do business in the State of Florida and listed in the Federal Register of the U.S. Department of Treasury for Surety Companies Acceptable on Federal Bonds.

Bid security shall be a certified check, cashier's check, Treasurer's check, bank draft, or bid bond acceptable to the Board in a form and manner that is acceptable to the Board.

Should the accepted bidder fail to furnish performance and materials and payment bonds, the amount of the bid security may be forfeited to the District.

2. Performance Security on Awards Other than Construction>  
\$200,000.00 to \$5,000,000

A, No Minimum Class

\$5,000,000.01 to \$10,000,000

A, Class IV

\$10,000,000.01 or more

A, Class V

3. Current certificate of authority as acceptable surety on Federal Bonds in accordance with the latest edition of the United States Treasury Department Circular 570 entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" and shall be accepted for an amount not exceeding the underwriting limitation thereon.

AA. Awards of \$500,000 or less

Bonds shall be written with a surety company or corporation meeting the qualifications as set forth in Paragraph A.2 above or the qualifications set forth in F.S. 287.0935.

- Vendor Performance

Upon award of all bids and contracts, vendor performance shall be documented by the originating department. Periodically, procurement staff and the originating department shall review and discuss awarded vendors' performance, per the terms and conditions of the bid or contract, including the spend analysis.

Should the vendor be identified with poor performance, procurement staff and the originating department shall notify the vendor to cure the bid or contract deficiency, within a stated timeframe.

- Suspension or Default by Vendor

Board Policy 6320.04, Contractor Discipline, governs debarment, suspension, and other disciplinary action that may be taken by the Board against contractors that violate law and Board policies.

Contractors may be suspended and/or debarred from doing business with the Board or otherwise disciplined. Suspension and debarment are serious sanctions that may only be imposed when it is in the best interest of the Board and to protect the public.

The Superintendent is authorized to develop and implement disciplinary procedures that comply with State and Federal laws, ordinances, codes, regulations, and Policy 6320.04.

- Bid or Contract Close-Out Period

Procurement staff and the originating department shall notify the vendor of the termination of the bid or contract services, within a reasonable time, requesting any pending reports, documents, data or property generated using district funds during the contract period or invoices to be submitted.

- Signatures of Superintendent and Designees on Contracts

The Board authorizes the use of signatures of the Superintendent and his/her designees on behalf of the Board on all contracts, agreements, and documents where a signature of the Chair is not required by law or regulation of the Department of Education. All contracts, agreements, and documents must be based upon approvals previously adopted and spread upon the minutes of the Board, unless exempted by Board policy. Each contract shall demonstrate its procurement authority.

- Purchasing Cards (PCards)

Pursuant to Board Policy 6424, purchasing cards may be used to make small dollar purchases and acquire materials and supplies as needed for operations.

Purchasing cards shall not be used to circumvent the general purchasing procedures established by State law and Board policy. Purchasing cards shall only be used for expenses in connection with Board-approved or school-related activities, that benefit the District and serve a valid and proper public purpose. Periodically, procurement staff shall review the PCard expenditures to ensure compliance with Board policies and the purchasing threshold requirements.

- Purchasing Principles

Employees shall be guided by the following principles and standards adopted by the National Institute of Governmental Purchasing (NIGP):

1. Accountability: taking ownership and being responsible to stakeholders for our actions, essential to preserve the public trust and protect the public interest.
2. Ethics: acting in a manner true to these values, essential to preserve the public's trust.
3. Impartiality: unbiased decision-making and action, essential to ensure fairness for the public good.
4. Professionalism: upholding high standards of job performance and ethical behavior, essential to balance diverse public interests.
5. Service: obligation to assist stakeholders, essential to support the public good.
6. Transparency: easily accessible and understandable policies and processes, essential to demonstrate responsible use of public funds.

Ethics training on ethical standards that are no lower than those prescribed by the State shall be provided to all employees involved in procurement activities for the Board.

Complaints alleging discrimination against any commercial enterprise doing business with the Board must be filed and will be investigated and addressed in accordance with Board Policy 6465.

### Maintenance of Procurement Records

The District shall maintain records sufficient to detail the history of all procurements, in accordance with the applicable retention period provided in the Records Retention Schedule of the Florida Department of State, Bureau of Archives and Records Management, or in 2 C.F.R., Part 200 as applicable to federal grant funds, whichever is longer. These records will include, but are not necessarily limited to, the following: rationale for the

method of procurement, selection of contract type, contractor selection, or rejection, and the basis for the contract price (including a cost or price analysis if applicable).

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Legal	F.S. 119.07
	F.S. 120.569
	F.S. 120.57
	F.S. 120.57(3)
	F.S. 255.0516
	F.S. 255.065
	F.S. 255.099
	F.S. 255.0991
	F.S. 255.25(3)(c)
	F.S. 282.041(15)
	F.S. 286.0113(2)(b)(1)
	F.S. 287.017
	F.S. 287.042(2)(c)
	F.S. 287.056
	F.S. 1001.41(1)(2)
	F.S. 1001.42(12)(j)
	F.S. 1001.42(26)
	F.S. 1001.43(10)
	F.S. 1006.27
	F.S. 1010.04(2)
	F.S. 1010.04(4)(a)
	F.A.C. 6A-1.012
	F.A.C. 6A-1.091
	F.A.C. 6A-7.0411(2)(i)
	F.A.C. 28-110.005(2)
Cross References	2 C.F.R. 200.317-.326
	2 C.F.R. 200.520
	Appendix II to 2 C.F.R., Part 200



Book	Policy Manual
Section	February 10, 2021 - <u>Initial</u> Reading
Title	PROCUREMENT - FEDERAL GRANTS/FUNDS
Code	6320.07
Status	<u>Initial</u> Reading - Recommended For Adoption at the March 17, 2021 Board Meeting

### 6320.07 - PROCUREMENT – FEDERAL GRANTS/FUNDS

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, School Board policies, and administrative procedures.

The Superintendent shall have and use a procurement and contract administration system in accordance with the USDOE requirements (2 C.F.R. 200.317-.326) for the administration and management of Federal grants and Federally-funded programs. The District shall maintain oversight that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the District's documented general purchasing Policy 6320.

The District shall take affirmative steps to assure that vendors certified pursuant to Board Policy 6320.02, and applicable labor surplus area firms, are used when possible in accordance with 2 C.F.R. 200.321.

All District employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 1129, Policy 3129, and Policy 4129 – *Conflict of Interest*.

The District will avoid acquisition of unnecessary or duplicative items. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

### Competition

All procurement transactions for the acquisition of property or services required under a Federal award paid for from Federal funds or District matching funds shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgment. In order to promote objective contractor performance and eliminate unfair competitive advantage, the District shall exclude from competition any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals for such competition.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms in order for them to qualify to do business
- B. unnecessary experience and excessive bonding requirements
- C. noncompetitive pricing practices between firms or between affiliated companies
- D. noncompetitive contracts to consultants that are on retainer contracts
- E. organizational conflicts of interest
- F. specification of only a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement
- G. any arbitrary action in the procurement process

Further, the District does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; or (2) the District is contracting for architectural and engineering services, in which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

To the extent that the District uses a pre-qualified list of persons, firms, or products to acquire goods and services that are subject to this policy, the pre-qualified list is open to qualified sources to promote maximum open and free competition. The District shall require that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and shall take steps to ensure maximum open and free competition from qualified sources. The District shall not preclude potential bidders from qualifying during the solicitation period.

### **Procurement Methods**

The District shall have and use documented procurement procedures, consistent with Board Policy 6320 and the standards described herein.

### **Solicitation Language (Purchasing Procedures)**

The District shall have written procurement procedures that require that all solicitations made pursuant to this policy incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

### **Domestic Preference for Procurement**

As appropriate and to the extent consistent with law, the District shall, to the extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards including all contracts and purchase orders for work or products under the Federal award.

## **Contract/Cost or Price Analysis**

The District shall perform a cost or price analysis in connection with every procurement action in excess of \$250,000, including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the District shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the District shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

## **Time and Materials Contracts**

The District uses a time and materials type contract only (1) after a determination that no other contract is suitable, and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the District is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the District shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

## **Suspension and Debarment**

The District will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the District and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the District shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The Superintendent shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. (See also Board Policy 6320.04) The District is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180.

Suspension is an action taken by the District that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 C.F.R. Part 180 Subpart G)

Debarment is an action taken by the Superintendent to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. chapter 1). A person so excluded is debarred. (2 C.F.R. Part 180 Subpart H)

The District shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over the established threshold, the District shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at [www.sam.gov](http://www.sam.gov); collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 C.F.R. Part 180 Subpart C)

## **Maintenance of Procurement Records**

The District shall maintain records sufficient to detail the history of all procurements, in accordance with the application retention period in the Records Retention Schedule of the Florida Department of State, Bureau of Archives and Records Management, or in 2 C.F.R., Part 200 as applicable to federal grant funds, whichever is longer. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection, or rejection, and the basis for the contract price (including a cost or price analysis if applicable).

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                                  Appendix II to Part 200  
                                  2 C.F.R. 200.520